

JANET R. LARSON

IBLA 85-25

Decided March 25, 1986

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. C-38194.

Affirmed.

1. Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Rentals

Where, following a drawing of simultaneously filed oil and gas lease applications, a first-drawn applicant fails to submit the executed lease agreement and advance rental within 30 days of receipt of notice to do so, the application is properly rejected.

APPEARANCES: Janet R. Larson, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Janet R. Larson has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated August 24, 1984, rejecting her simultaneous oil and gas lease application, C-38194, drawn with first priority for parcel CO-133 in the September 1983 simultaneous oil and gas lease drawing.

By notice dated April 27, 1984, BLM transmitted copies of a noncompetitive oil and gas lease offer for parcel CO-133 and required appellant to execute and return the copies, along with payment of the first year's rental (\$ 2,640), "within 30 days of the receipt of this notice." BLM stated that failure to comply timely with this requirement would "result in automatic disqualification of the applicant to receive the lease and rejection of the application without further notice." The record indicates the notice was delivered to appellant on April 30, 1984.

On June 22, 1984, BLM received executed copies of appellant's lease offer and the first year's rental payment. The offer was dated May 24, 1984.

In a letter to BLM, dated August 5, 1984, appellant stated that she had mailed the first year's rental payment "[o]n May 24, 1984."

In its August 1984 decision, BLM rejected appellant's simultaneous oil and gas lease application because of the untimely filing of the executed copies of the lease offer and the first year's rental payment, *i.e.*, 23 days after the May 30, 1984, due date.

In her statement of reasons for appeal, appellant contends that her application should not be rejected because she has been negotiating for the sale of the lease and rejection would adversely affect her "credibility."

[1] It is well established that BLM properly rejects a simultaneous oil and gas lease application or the subsequently filed lease offer where the applicant failed to file with the proper BLM office executed copies of the offer and the first year's rental payment "within 30 days from the date of receipt of the notice [to do so]," in accordance with 43 CFR 3112.6-1(a). *E.g.*, Satellite 8307193, 85 IBLA 357 (1985); C. H. Postlewait, 83 IBLA 156 (1984). Indeed, this result is mandated by Departmental regulation. 43 CFR 3112.5-1(c) ("application * * * shall be rejected"); 43 CFR 3112.5-2(a) ("offer shall be rejected".) The Department is bound by its duly promulgated regulations. As we said in Raymond C. Long, 83 IBLA 342, 343 (1984):

The regulations provide no leeway for consideration of excuses for failure to pay timely. See Robert D. Nininger, 16 IBLA 200 (1974), *aff'd*, Nininger v. Morton, No. 74-1246 (D.D.C. Mar. 25, (1975); see also Susan Dawson, 35 IBLA 12 (1978), *aff'd*, Dawson v. Andrus, [612 F.2d 1280 (10th Cir. 1980)]. BLM may not accept the forms and payment after the 30-day period because the rights of the second- and third-qualified applicants have intervened. Paul C. Deters, 80 IBLA 121 (1984); Pioneer Farmout #1, Ltd., 76 IBLA 337 (1983).

Accordingly, we conclude that BLM properly rejected appellant's lease application where the executed copies of the lease offer and the first year's rental payment were not received by BLM until June 22, 1984, well after the regulatory deadline for filing. 1/ Raymond C. Long, *supra*.

1/ A document is deemed to be filed with BLM where it is "delivered to and received by the proper office." 43 CFR 1821.2-2(f). Appellant states she mailed the required documents on May 24, 1984, which should have left sufficient time for them to have been delivered to and received by BLM before the regulatory deadline. However, even assuming appellant mailed the documents on that date, we have long held that, in mailing a document, the sender assumes the risk and must bear the consequences of loss or untimely delivery of the document by the Postal Service. *E.g.*, Mary Jane Associates, 74 IBLA 43 (1983); Phil E. Parks, 69 IBLA 48 (1982).

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

John H. Kelly
Administrative Judge

Will A. Irwin
Administrative Judge.

